

SHB 1761 - S COMM AMD

By Committee on Water, Energy & Telecommunications

ADOPTED 04/10/2007

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 70.105D.030 and 2002 c 288 s 3 are each amended to
4 read as follows:

5 (1) The department may exercise the following powers in addition to
6 any other powers granted by law:

7 (a) Investigate, provide for investigating, or require potentially
8 liable persons to investigate any releases or threatened releases of
9 hazardous substances, including but not limited to inspecting,
10 sampling, or testing to determine the nature or extent of any release
11 or threatened release. If there is a reasonable basis to believe that
12 a release or threatened release of a hazardous substance may exist, the
13 department's authorized employees, agents, or contractors may enter
14 upon any property and conduct investigations. The department shall
15 give reasonable notice before entering property unless an emergency
16 prevents such notice. The department may by subpoena require the
17 attendance or testimony of witnesses and the production of documents or
18 other information that the department deems necessary;

19 (b) Conduct, provide for conducting, or require potentially liable
20 persons to conduct remedial actions (including investigations under (a)
21 of this subsection) to remedy releases or threatened releases of
22 hazardous substances. In carrying out such powers, the department's
23 authorized employees, agents, or contractors may enter upon property.
24 The department shall give reasonable notice before entering property
25 unless an emergency prevents such notice. In conducting, providing
26 for, or requiring remedial action, the department shall give preference
27 to permanent solutions to the maximum extent practicable and shall
28 provide for or require adequate monitoring to ensure the effectiveness
29 of the remedial action;

1 (c) Indemnify contractors retained by the department for carrying
2 out investigations and remedial actions, but not for any contractor's
3 reckless or wilful misconduct;

4 (d) Carry out all state programs authorized under the federal
5 cleanup law and the federal resource, conservation, and recovery act,
6 42 U.S.C. Sec. 6901 et seq., as amended;

7 (e) Classify substances as hazardous substances for purposes of RCW
8 70.105D.020(7) and classify substances and products as hazardous
9 substances for purposes of RCW 82.21.020(1);

10 (f) Issue orders or enter into consent decrees or agreed orders
11 that include, or issue written opinions under (i) of this subsection
12 that may be conditioned upon, deed restrictions where necessary to
13 protect human health and the environment from a release or threatened
14 release of a hazardous substance from a facility. Prior to
15 establishing a deed restriction under this subsection, the department
16 shall notify and seek comment from a city or county department with
17 land use planning authority for real property subject to a deed
18 restriction;

19 (g) Enforce the application of permanent and effective
20 institutional controls that are necessary for a remedial action to be
21 protective of human health and the environment and the notification
22 requirements established in RCW 70.105D.110, and impose penalties for
23 violations of that section consistent with RCW 70.105D.050;

24 (h) Require holders to conduct remedial actions necessary to abate
25 an imminent or substantial endangerment pursuant to RCW
26 70.105D.020(12)(b)(ii)(C);

27 (i) Provide informal advice and assistance to persons regarding the
28 administrative and technical requirements of this chapter. This may
29 include site-specific advice to persons who are conducting or otherwise
30 interested in independent remedial actions. Any such advice or
31 assistance shall be advisory only, and shall not be binding on the
32 department. As a part of providing this advice and assistance for
33 independent remedial actions, the department may prepare written
34 opinions regarding whether the independent remedial actions or
35 proposals for those actions meet the substantive requirements of this
36 chapter or whether the department believes further remedial action is
37 necessary at the facility. The department may collect, from persons
38 requesting advice and assistance, the costs incurred by the department

1 in providing such advice and assistance; however, the department shall,
2 where appropriate, waive collection of costs in order to provide an
3 appropriate level of technical assistance in support of public
4 participation. The state, the department, and officers and employees
5 of the state are immune from all liability, and no cause of action of
6 any nature may arise from any act or omission in providing, or failing
7 to provide, informal advice and assistance; and

8 (j) Take any other actions necessary to carry out the provisions of
9 this chapter, including the power to adopt rules under chapter 34.05
10 RCW.

11 (2) The department shall immediately implement all provisions of
12 this chapter to the maximum extent practicable, including investigative
13 and remedial actions where appropriate. The department shall adopt,
14 and thereafter enforce, rules under chapter 34.05 RCW to:

15 (a) Provide for public participation, including at least (i) public
16 notice of the development of investigative plans or remedial plans for
17 releases or threatened releases and (ii) concurrent public notice of
18 all compliance orders, agreed orders, enforcement orders, or notices of
19 violation;

20 (b) Establish a hazard ranking system for hazardous waste sites;

21 (c) Provide for requiring the reporting by an owner or operator of
22 releases of hazardous substances to the environment that may be a
23 threat to human health or the environment within ninety days of
24 discovery, including such exemptions from reporting as the department
25 deems appropriate, however this requirement shall not modify any
26 existing requirements provided for under other laws;

27 (d) Establish reasonable deadlines not to exceed ninety days for
28 initiating an investigation of a hazardous waste site after the
29 department receives notice or otherwise receives information that the
30 site may pose a threat to human health or the environment and other
31 reasonable deadlines for remedying releases or threatened releases at
32 the site;

33 (e) Publish and periodically update minimum cleanup standards for
34 remedial actions at least as stringent as the cleanup standards under
35 section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at
36 least as stringent as all applicable state and federal laws, including
37 health-based standards under state and federal law; and

1 (f) Apply industrial clean-up standards at industrial properties.
2 Rules adopted under this subsection shall ensure that industrial
3 properties cleaned up to industrial standards cannot be converted to
4 nonindustrial uses without approval from the department. The
5 department may require that a property cleaned up to industrial
6 standards is cleaned up to a more stringent applicable standard as a
7 condition of conversion to a nonindustrial use. Industrial clean-up
8 standards may not be applied to industrial properties where hazardous
9 substances remaining at the property after remedial action pose a
10 threat to human health or the environment in adjacent nonindustrial
11 areas.

12 (3) To achieve and protect the state's long-term ecological health,
13 the department shall prioritize sufficient funding to clean up
14 hazardous waste sites and prevent the creation of future hazards due to
15 improper disposal of toxic wastes, and create financing tools to clean
16 up large-scale hazardous waste sites requiring multiyear commitments.
17 To effectively monitor toxic accounts expenditures, the department
18 shall develop a comprehensive ten-year financing report that identifies
19 long-term remedial action project costs, tracks expenses, and projects
20 future needs.

21 (4) Before ((November 1st)) December 20th of each even-numbered
22 year, the department shall ((develop, with public notice and hearing,
23 and submit to)):

24 (a) Develop a comprehensive ten-year financing report in
25 coordination with all local governments with clean-up responsibilities
26 that identifies the projected biennial hazardous waste site remedial
27 action needs that are eligible for funding from the local toxics
28 control account;

29 (b) Work with local governments to develop working capital reserves
30 to be incorporated in the ten-year financing report;

31 (c) Identify the projected remedial action needs for orphaned,
32 abandoned, and other clean-up sites that are eligible for funding from
33 the state toxics control account;

34 (d) Project the remedial action need, cost, revenue, and any
35 recommended working capital reserve estimate to the next biennium's
36 long-term remedial action needs from both the local toxics control
37 account and the state toxics control account, and submit this
38 information to the ((ways and means and)) appropriate standing fiscal

1 and environmental committees of the senate and house of representatives
2 (~~a ranked list of projects and expenditures recommended for~~
3 ~~appropriation from both the state and local toxics control accounts.~~
4 ~~The department shall also~~)). This submittal must also include a ranked
5 list of such remedial action projects for both accounts; and

6 (e) Provide the legislature and the public each year with an
7 accounting of the department's activities supported by appropriations
8 from the state and local toxics control accounts, including a list of
9 known hazardous waste sites and their hazard rankings, actions taken
10 and planned at each site, how the department is meeting its (~~top two~~)
11 waste management priorities under RCW 70.105.150, and all funds
12 expended under this chapter.

13 (~~(4)~~) (5) The department shall establish a scientific advisory
14 board to render advice to the department with respect to the hazard
15 ranking system, cleanup standards, remedial actions, deadlines for
16 remedial actions, monitoring, the classification of substances as
17 hazardous substances for purposes of RCW 70.105D.020(7) and the
18 classification of substances or products as hazardous substances for
19 purposes of RCW 82.21.020(1). The board shall consist of five
20 independent members to serve staggered three-year terms. No members
21 may be employees of the department. Members shall be reimbursed for
22 travel expenses as provided in RCW 43.03.050 and 43.03.060.

23 (~~(5)~~) (6) The department shall establish a program to identify
24 potential hazardous waste sites and to encourage persons to provide
25 information about hazardous waste sites.

26 **Sec. 2.** RCW 70.105D.070 and 2005 c 488 s 926 are each amended to
27 read as follows:

28 (1) The state toxics control account and the local toxics control
29 account are hereby created in the state treasury.

30 (2) The following moneys shall be deposited into the state toxics
31 control account: (a) Those revenues which are raised by the tax
32 imposed under RCW 82.21.030 and which are attributable to that portion
33 of the rate equal to thirty-three one-hundredths of one percent; (b)
34 the costs of remedial actions recovered under this chapter or chapter
35 70.105A RCW; (c) penalties collected or recovered under this chapter;
36 and (d) any other money appropriated or transferred to the account by

1 the legislature. Moneys in the account may be used only to carry out
2 the purposes of this chapter, including but not limited to the
3 following activities:

4 (i) The state's responsibility for hazardous waste planning,
5 management, regulation, enforcement, technical assistance, and public
6 education required under chapter 70.105 RCW;

7 (ii) The state's responsibility for solid waste planning,
8 management, regulation, enforcement, technical assistance, and public
9 education required under chapter 70.95 RCW;

10 (iii) The hazardous waste cleanup program required under this
11 chapter;

12 (iv) State matching funds required under the federal cleanup law;

13 (v) Financial assistance for local programs in accordance with
14 chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

15 (vi) State government programs for the safe reduction, recycling,
16 or disposal of hazardous wastes from households, small businesses, and
17 agriculture;

18 (vii) Hazardous materials emergency response training;

19 (viii) Water and environmental health protection and monitoring
20 programs;

21 (ix) Programs authorized under chapter 70.146 RCW;

22 (x) A public participation program, including regional citizen
23 advisory committees;

24 (xi) Public funding to assist potentially liable persons to pay for
25 the costs of remedial action in compliance with cleanup standards under
26 RCW 70.105D.030(2)(e) but only when the amount and terms of such
27 funding are established under a settlement agreement under RCW
28 70.105D.040(4) and when the director has found that the funding will
29 achieve both (A) a substantially more expeditious or enhanced cleanup
30 than would otherwise occur, and (B) the prevention or mitigation of
31 unfair economic hardship; and

32 (xii) Development and demonstration of alternative management
33 technologies designed to carry out the (~~top two~~) hazardous waste
34 management priorities of RCW 70.105.150.

35 (3) The following moneys shall be deposited into the local toxics
36 control account: Those revenues which are raised by the tax imposed
37 under RCW 82.21.030 and which are attributable to that portion of the
38 rate equal to thirty-seven one-hundredths of one percent.

1 (a) Moneys deposited in the local toxics control account shall be
2 used by the department for grants or loans to local governments for the
3 following purposes in descending order of priority: (i) Remedial
4 actions; (ii) hazardous waste plans and programs under chapter 70.105
5 RCW; (iii) solid waste plans and programs under chapters 70.95, 70.95C,
6 70.95I, and 70.105 RCW; (iv) funds for a program to assist in the
7 assessment and cleanup of sites of methamphetamine production, but not
8 to be used for the initial containment of such sites, consistent with
9 the responsibilities and intent of RCW 69.50.511; and (v) cleanup and
10 disposal of hazardous substances from abandoned or derelict vessels
11 that pose a threat to human health or the environment. For purposes of
12 this subsection (3)(a)(v), "abandoned or derelict vessels" means
13 vessels that have little or no value and either have no identified
14 owner or have an identified owner lacking financial resources to clean
15 up and dispose of the vessel. Funds for plans and programs shall be
16 allocated consistent with the priorities and matching requirements
17 established in chapters 70.105, 70.95C, 70.95I, and 70.95 RCW. During
18 the 1999-2001 fiscal biennium, moneys in the account may also be used
19 for the following activities: Conducting a study of whether dioxins
20 occur in fertilizers, soil amendments, and soils; reviewing
21 applications for registration of fertilizers; and conducting a study of
22 plant uptake of metals. During the 2005-2007 fiscal biennium, the
23 legislature may transfer from the local toxics control account to the
24 state toxics control account such amounts as specified in the omnibus
25 capital budget bill. During the 2005-2007 fiscal biennium, moneys in
26 the account may also be used for grants to local governments to
27 retrofit public sector diesel equipment and for storm water planning
28 and implementation activities.

29 (b) Funds may also be appropriated to the department of health to
30 implement programs to reduce testing requirements under the federal
31 safe drinking water act for public water systems. The department of
32 health shall reimburse the account from fees assessed under RCW
33 70.119A.115 by June 30, 1995.

34 (c) To expedite cleanups throughout the state, the department shall
35 partner with local communities and liable parties for cleanups. The
36 department is authorized to use the following additional strategies in
37 order to ensure a healthful environment for future generations:

1 (i) The director may alter grant-matching requirements to create
2 incentives for local governments to expedite cleanups when one of the
3 following conditions exists:

4 (A) Funding would prevent or mitigate unfair economic hardship
5 imposed by the clean-up liability;

6 (B) Funding would create new substantial economic development,
7 public recreational, or habitat restoration opportunities that would
8 not otherwise occur; or

9 (C) Funding would create an opportunity for acquisition and
10 redevelopment of vacant, orphaned, or abandoned property under RCW
11 70.105D.040(5) that would not otherwise occur;

12 (ii) The use of outside contracts to conduct necessary studies;

13 (iii) The purchase of remedial action cost-cap insurance, when
14 necessary to expedite multiparty clean-up efforts.

15 (4) Except for unanticipated receipts under RCW 43.79.260 through
16 43.79.282, moneys in the state and local toxics control accounts may be
17 spent only after appropriation by statute.

18 (5) One percent of the moneys deposited into the state and local
19 toxics control accounts shall be allocated only for public
20 participation grants to persons who may be adversely affected by a
21 release or threatened release of a hazardous substance and to not-for-
22 profit public interest organizations. The primary purpose of these
23 grants is to facilitate the participation by persons and organizations
24 in the investigation and remedying of releases or threatened releases
25 of hazardous substances and to implement the state's solid and
26 hazardous waste management priorities. However, during the 1999-2001
27 fiscal biennium, funding may not be granted to entities engaged in
28 lobbying activities, and applicants may not be awarded grants if their
29 cumulative grant awards under this section exceed two hundred thousand
30 dollars. No grant may exceed sixty thousand dollars. Grants may be
31 renewed annually. Moneys appropriated for public participation from
32 either account which are not expended at the close of any biennium
33 shall revert to the state toxics control account.

34 (6) No moneys deposited into either the state or local toxics
35 control account may be used for solid waste incinerator feasibility
36 studies, construction, maintenance, or operation.

37 (7) The department shall adopt rules for grant or loan issuance and
38 performance.

1 (8) During the 2005-2007 fiscal biennium, the legislature may
2 transfer from the state toxics control account to the water quality
3 account such amounts as reflect the excess fund balance of the fund."

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4 On page 1, line 2 of the title, after "cleanups;" strike the
5 remainder of the title and insert "and amending RCW 70.105D.030 and
6 70.105D.070."

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